

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

_____)	
In re:)	
)	
KIRK HUNDLEY)	Chapter 7
)	Case No.: 06-40468-JBR
Debtor.)	
_____)	
JANICE HUNDLEY)	
Plaintiff,)	
)	
v.)	Adversary Proceeding
)	Case No.:
JANICE G. MARSH, Trustee,)	
Defendant.)	
_____)	

ADVERSARY COMPLAINT TO DETERMINE INTEREST IN PROPERTY (TAX REFUND)

To the Honorable Joel B. Rosenthal, United States Bankruptcy Judge:

Now comes Janice Hundley, as Plaintiff, and states the following for her Complaint:

Introduction

Plaintiff, Janice Hundley, non-debtor spouse of Debtor, Kirk Hundley, brings this action against Janice G. Marsh, Trustee in Bankruptcy of Kirk Hundley, seeking a determination that the Plaintiff has a fifty percent (50%) interest in any and all tax refunds on any joint returns she filed with her Debtor husband.

Parties

1. Plaintiff, Janice Hundley ("Mrs. Hundley") is a resident of Southborough, Massachusetts. Mrs. Hundley is the non-debtor spouse of Kirk Hundley (the "Debtor").
2. Defendant, Janice G. Marsh (the "Trustee"), is the duly appointed Chapter 7 Trustee of the Debtor. The Trustee maintains an office at 446 Main Street, Worcester, Massachusetts.

Jurisdiction and Venue/Core Proceeding

3. This Court has subject matter jurisdiction and personal jurisdiction over the parties pursuant to 28 U.S.C. § 1334 and 157(a).

4. Venue is proper in this Court as the Debtor voluntarily commenced his Chapter 7 case in this Court and this is a proceeding to determine an interest in property as set forth in Bankruptcy Rule 7001(1).

5. This case is a core proceeding pursuant to 28 U.S.C. 157(b).

COUNT I

(Janice Hundley v. Janice G. Marsh, Trustee in Bankruptcy of Kirk Hundley for Determination that Plaintiff has 50% interest in refund from 2002 joint tax return)

6. On April 3, 2006, the Debtor filed a voluntary Chapter 7 petition for relief in this Court. At the time of the filing of his petition, the Debtor and Mrs. Hundley were soon expecting a refund on their 2002 joint income tax return in the amount of approximately \$90,000 (the "Joint Refund").

7. On April 4, 2006, the Trustee was appointed.

8. On April 27, 2006, the Debtor filed his Schedules of Assets and Liabilities. [Docket # 20]. On his Schedule B, the Debtor listed his one half interest in the expected Joint Refund. At the time of the filing of his Schedules of Assets and Liabilities, the Debtor valued his one half interest in the Joint Refund at \$41,500.

9. The Trustee contacted the Internal Revenue Service seeking to have the entire Joint Refund sent directly to her. Upon information and belief, the Trustee is in possession of the funds she received as proceeds of the Joint Refund.

10. On January 4, 2007, counsel to Mrs. Hundley notified the Trustee in writing of Mrs. Hundley's claim to one half of the Joint Refund.

11. On December 3, 2008, Mrs. Hundley, by and through her counsel, made a formal demand for her fifty percent (50%) interest in the Joint Refund.

12. As of the filing of this Adversary Complaint, Mrs. Hundley has not received any portion of her interest in the Joint Refund.

13. Upon information and belief, the Trustee is in possession of the entire funds from the Joint Refund.

14. As joint filers, Mrs. Hundley and the Debtor are jointly and severally liable for any tax deficiency that might result from their jointly filed tax return.

15. Since Mrs. Hundley can suffer the burdens of filing a joint tax return, she should get the attendant benefits of jointly filing as well. This includes her right to receive fifty percent (50%) of the Joint Refund.

WHEREFORE, Plaintiff, Janice Hundley, respectfully requests that the Court determine that she has a fifty percent (50%) interest in the tax refund resulting from the Plaintiff and her Debtor husband's joint 2002 tax return as well as any interest the Trustee has collected for the time she has held Mrs. Hundley's share of the Tax Refund.

JANICE HUNDLEY

By her attorneys,

/s/ Todd B. Gordon

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Dated: January 26, 2009